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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 330 (AJN)

5 GHISLAINE MAXWELL,

6 Defendant.

Telephone Conference

7 -----x
8 New York, N.Y.
9 October 21, 2021
12:00 p.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: LARA E. POMERANTZ

ALISON G. MOE

17 ANDREW ROHRBACH

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19 BOBBI C. STERNHEIM

Attorney for Defendant

20 -and-

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21 BY: CHRISTIAN R. EVERDELL

-and-

22 HADDON, MORGAN and FOREMAN, P.C.

23 BY: LAURA A. MENNINGER

JEFFREY S. PAGLIUCA

24 Also Present: Rigoberto Landers

Susan Yee Foon

25 Rhonda Mayers-Best

Thomas Mixon

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1 (Case called; appearances noted)

2 THE COURT: Good afternoon, everyone. This is Judge
3 Nathan.

4 We are here for a pretrial conference in this matter.
5 The case is scheduled to commence the jury selection process on
6 November 4, trial to commence on November 29.

7 The primary purpose of today's conference is to go
8 over jury selection matters and logistics. I'll also address
9 the request to seal the proposed questionnaire and voir dire
10 submitted by the parties, as I indicated I would in my order
11 docketed yesterday.

12 As a preliminary matter, let me note that we are
13 proceeding telephonically today. Counsel, my view is that,
14 under Rule 43, we need not be in person with Ms. Maxwell
15 present for today's proceeding. We do have Ms. Maxwell on the
16 phone, of course. I do want to make sure counsel agree with
17 that view and have no objection to proceeding remotely by phone
18 conference today.

19 Ms. Pomerantz.

20 MS. POMERANTZ: The government has no objection, your
21 Honor.

22 THE COURT: Ms. Sternheim.

23 MS. STERNHEIM: The defense has no objection. Thank
24 you.

25 THE COURT: OK. Thank you.

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1 All right. We will proceed.

2 A few preliminary matters.

3 I did provide public access to this proceeding via a
4 phone line that can accommodate up to 4,000 callers, who are in
5 listen-only mode. I do remind anyone calling in and listening
6 that federal law prohibits the recording or rebroadcasting of
7 any portion of this proceeding, and violation of that rule can
8 result in monetary or other sanctions.

9 Another preliminary matter, as I indicated in my
10 order, Dkt. No. 344, I will ensure access to this proceeding
11 and all proceedings in the case for alleged victims as well as
12 for family members of Ms. Maxwell, and the District Executive's
13 Office has coordinated with defense counsel to ensure access to
14 this call by family members of Ms. Maxwell. The D.E. has also
15 coordinated with the victim coordinator unit in the U.S.
16 Attorney's Office to ensure access for any alleged victims who
17 wish to be present.

18 My thanks to the D.E.'S Office for facilitating those
19 arrangements.

20 On that front, I will note that I have asked
21 representatives of the District Executive's Office and the jury
22 department to be on the phone today in case I need their
23 assistance in handling any logistics that may come up, although
24 I do believe I have a firm handle on the arrangements. I've
25 been working hard with the folks in the clerk's office, the

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1 jury department, the D.E.'S Office to make sure we are ready
2 for the upcoming proceeding.

3 As I've noted, the primary purpose of today's
4 conference is to go through the questionnaire and voir dire
5 procedures for jury selection. I've received the parties'
6 joint proposed questionnaire and voir dire. The defendant
7 filed a motion regarding the voir dire procedures, and I've
8 considered those submissions as well, Dkt. No. 341, and the
9 government's response at 355.

10 I've also, in coming to resolution as to how to handle
11 these procedures, considered examples of questionnaires and
12 voir dire used for jury selection in many high-profile matters
13 by my colleagues in this district and other districts. I've
14 reviewed and studied case law on the subject, including
15 *Press-Enterprise Co. v. Superior Court of Cal.*, 464 U.S. 501
16 (1984); *Presley v. Georgia*, 558 U.S. 209 (2010); *U.S. v. King*,
17 140 F.3d 76 (2d Cir. 1998); and *ABC, Inc. v. Stewart*, 360 F.3d
18 90 (2d Cir. 2004). And of course, all of this must be
19 considered in conjunction with the district's COVID-19
20 protocols.

21 As to that, as I noted, I've worked closely and
22 extensively with the very hardworking folks in the clerk's
23 office, including the jury department and the D.E.'S Office, to
24 map out plans for how to effectuate my determinations as to the
25 best way to proceed under all of these factors and

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1 considerations.

2 Taking all of that into account, I'll describe now how
3 we will proceed.

4 As I've indicated, we will do a screening
5 questionnaire before jury selection. That questionnaire will
6 prescreen for what I see as the major for-cause strike issues
7 in the case. So, for example, the trial's length and schedule,
8 a juror's personal knowledge of the parties, extent of a
9 juror's awareness of publicity about the case and the
10 defendant, and any bias due to publicity or as a result of the
11 nature of the charges. This sort of questionnaire is, of
12 course, very common in high-profile cases. I transmitted my
13 draft questionnaire to counsel yesterday, and we'll discuss it
14 shortly.

15 As they typically do, the clerk's office will randomly
16 assign juror numbers and create a corresponding list of names
17 and juror numbers for the prospective jurors. That list will
18 go to counsel and the Court for use throughout jury selection.
19 On the questionnaire itself, jurors will be identified only by
20 their assigned juror number. We will refer to the jurors in
21 court throughout the process by their juror numbers only.

22 The jury department will administer the questionnaire
23 in morning and afternoon panels on November 4th, 5th and 12th.
24 The procedure between questionnaires and voir dire will be as
25 follows:

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1 The jury department will provide the completed
2 questionnaires to the U.S. Attorney's Office for copying. The
3 U.S. Attorney's Office will provide copies to the defense.
4 I've been informed by the jury department that this is the
5 standard practice for the administrative tasks, but certainly
6 let me know if either side has a different proposal to
7 effectuate that administrative task of copying the completed
8 questionnaires.

9 After reviewing the completed questionnaires, counsel
10 must then confer in good faith and jointly submit to the Court
11 four lists:

12 No. 1, prospective jurors that both sides agree should
13 proceed to voir dire;

14 Two, prospective jurors that both sides agree should
15 be excused;

16 Three, prospective jurors that the defense but not the
17 government believes should be excused; and

18 Fourth, prospective jurors that the government but not
19 the defense believes should be excused.

20 I want to pause for a moment because I heard a chime.

21 Ms. Williams, I just want to confirm that we have
22 Ms. Maxwell and counsel and the court reporter still on the
23 line.

24 THE DEPUTY CLERK: Yes, Judge. That's someone coming
25 into the room.

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1 THE COURT: OK. Thank you.

2 Those are the four lists.

3 For the questionnaires completed on November 4th and
4 5th, those lists will be due to the Court via email by November
5 7. For questionnaires completed on November 12, the lists will
6 be due by email by November 13, and that's so I can let the
7 jury department know who to call back for voir dire.

8 I am setting a placeholder conference, an in-person
9 placeholder conference for November 15 at 9:30 a.m. to resolve
10 disputes, as needed, with respect to for-cause strikes based on
11 the questionnaire.

12 That's the questionnaire process.

13 I'll turn now to voir dire.

14 On November 16th through 19th, if we need all of those
15 days, I will then conduct voir dire of the individual jurors
16 who have been brought back, asking appropriate follow-up
17 questions based on questionnaire responses, some additional
18 questions more appropriately asked during oral voir dire, and
19 background information that will enable the lawyers to gather
20 substantial information in aid of the exercise of informed
21 peremptory challenges. And yesterday, I sent the parties my
22 draft voir dire, which we will also discuss in a moment.

23 I will conduct this as one-on-one voir dire with each
24 prospective juror in the presence of the parties and with
25 public access to the proceedings. We will do this one juror at

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1 a time, because of Covid-related space limitations, to
2 streamline the process in light of a likelihood of high a
3 number of sidebars which would otherwise be required, and to
4 ensure that the comments of one juror do not infect the pool.
5 The other jurors will be held in a different courtroom on the
6 same floor and brought over to the courtroom we will be in one
7 at a time.

8 I am not going to permit attorney-conducted voir dire.
9 As a general matter, neither I nor most of my colleagues permit
10 attorney-conducted voir dire. The factors related to this case
11 point strongly against deviation from that standard practice.
12 That doesn't mean counsel can't have input into potential
13 follow-up questions. As in any voir dire, if you want to
14 propose a particular follow-up question, you can tell me and
15 I'll decide whether or not to ask the proposed question and how
16 best to phrase it in a neutral and appropriate way.

17 As noted, I will permit public access to the voir dire
18 questioning. Prospective jurors will be referred to only by
19 their juror numbers. In order to comply with the district's
20 COVID-19 protocols, the public will be able to access the voir
21 dire questioning via overflow rooms in the courthouse. The
22 overflow rooms will have live feeds of the proceeding.

23 Two pool reporters will be permitted in the courtroom
24 proper. In-house press will be able to view the proceedings
25 from press rooms, which, like the public overflow rooms, will

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1 have live feeds of the proceedings.

2 The D.E.'S Office will facilitate these arrangements,
3 and I am grateful in advance to them as well as for the thought
4 that they've already put into this process.

5 That's how we'll work. There are some deviations from
6 my normal practices certainly in light of the many
7 considerations in this case. The COVID-19 protocols make
8 spacing tricky. The procedures I've described are the best way
9 to screen the necessary number of jurors for this type of
10 high-profile case in a an efficient manner considering the
11 space and time limitations that we'll be working with.

12 We're also all aware that there's been intense media
13 and public interest in this case, as the defendant's motion
14 highlights, and I expect certainly will continue. Moreover,
15 this trial is dealing with sensitive and controversial issues;
16 namely, the alleged sexual assault and sex trafficking of
17 minors. To impanel a jury that can fairly and impartially
18 consider these charges, I'll have to ask personal questions
19 about the prospective jurors' experience with these issues.
20 I've carefully taken all of these factors into account.

21 Based on this careful consideration of all of the
22 relevant factors, the procedures I've just described will
23 protect the health of the parties and prospective jurors during
24 the continuing pandemic; help protect juror privacy; help
25 ensure juror candor and honesty; and, ultimately, help to

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1 ensure the selection of a fair and impartial jury.

2 At the same time, these procedures will ensure the
3 First Amendment rights to public access, as is necessary and
4 required by law.

5 I'm going to pause here and ask if counsel have any
6 questions about what I've described so far.

7 Ms. Pomerantz.

8 MS. POMERANTZ: Thank you, your Honor.

9 The government, I'm happy to raise certain questions
10 we have regarding the names and locations to be supplied in the
11 oral voir dire, as the government has certain proposals that it
12 would like to set forth for the Court. I'm happy to do that
13 now or at another point if the Court would like.

14 THE COURT: Do these proposals relate to the
15 government's motion that was just filed but not fully briefed,
16 or are those separate concerns?

17 MS. POMERANTZ: It relates to the government's motion
18 regarding privacy and dignity of certain minor victims in this
19 case, specifically relating to the request that victims and
20 witnesses, certain victims and witnesses testify under
21 pseudonyms or their first names only.

22 THE COURT: Right. I think I have to get briefing on
23 that motion. Needless to say I'm not prepared to rule on that
24 yet, so to the extent that the proposals you want to suggest
25 had a resolution of that motion, I think we need to wait. But

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1 let me say that I think we have time to resolve that because
2 those matters I don't think need to be dealt with for purposes
3 of the questionnaire but for purposes of the oral voir dire.

4 Do you agree with that, Ms. Pomerantz?

5 MS. POMERANTZ: Yes, I agree with that, your Honor.

6 THE COURT: OK. Anything else you want to raise based
7 on the process I've described so far?

8 MS. POMERANTZ: No. Thank you, your Honor.

9 THE COURT: Ms. Sternheim.

10 MS. STERNHEIM: Thank you, Judge.

11 While we appreciate the questioning of the jurors one
12 at a time, we do have a concern with regard to very sensitive
13 issues being raised in the presence of media and other public,
14 other people in the public who may have access to this. I
15 would like to know how the Court is going to handle that.

16 THE COURT: Well, I think, as in any voir dire, there
17 are sometimes instances in which something slightly different
18 might be required, but I guess without knowing specifically
19 what the issue is or what the specific concern is, I don't know
20 that I can address it writ large. If you want to give an
21 example, I'm happy to hear that.

22 MS. STERNHEIM: Sure.

23 With regard to personal experience that may have
24 bearing on the subject matter of the charges, that is
25 particularly sensitive information. I think that it has a

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1 chilling effect for any juror who, under oath, is going to have
2 to answer very personal questions, let alone to have to answer
3 those questions in a public forum with press being present and
4 other members of the public viewing this from an overflow room.

5 THE COURT: My view is we can deal with those
6 situations kind of one at a time, depending on what emerges
7 from the particular questionnaire that we're looking at at the
8 time. As an example, I have conferred with Judge Donnelly, who
9 went through similar voir dire questioning recently in the
10 Eastern District, and there was public access to the individual
11 questioning, and I think all of that was managed in a way that
12 everybody felt comfortable with.

13 I think we start with, as the law requires, as the
14 First Amendment requires and case law requires, the presumption
15 of public access. I will take into account, as need be, any
16 specific requests for deviation in a tailored and narrow way to
17 ensure juror candor, protection of privacy, and the like.

18 That's my overall approach. I don't think we need to
19 deal with it in any broader way now, but tell me if you
20 disagree.

21 MS. STERNHEIM: I do not disagree. We do not need to
22 deal with it now. I just wanted to express our concerns on
23 that issue.

24 THE COURT: OK. Anything else, Ms. Sternheim?

25 MS. STERNHEIM: Yes. Just a moment, please?

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1 THE COURT: Go ahead.

2 MS. STERNHEIM: Your Honor, at this point do we know
3 how many jurors will be summoned and how many the Court is
4 planning to select for the final voir dire?

5 THE COURT: Yes. What I can tell you -- and again, I
6 just want to say an enormous thanks to the jury department, who
7 I've been working with closely on this for months, as you can
8 imagine. The return rate in the Covid era has gone up and down
9 on summonses, but we have estimated our ability to administer
10 the questionnaire over the three days in a morning and
11 afternoon panel each day; the goal was 600 jurors, if we need
12 it.

13 That's the answer to question one.

14 Question two I was going to get to the exercise of
15 peremptories in a moment.

16 I'm sorry. Maybe I misunderstood.

17 What was question No. 2, Ms. Sternheim?

18 MS. STERNHEIM: It was how many you are going to
19 ultimately have us select to sit.

20 THE COURT: Yes. OK. I thought I had that in a prior
21 order, but my intention is to sit six alternates, so we'll have
22 a jury of 18.

23 MS. STERNHEIM: Thank you.

24 THE COURT: OK. Are there other questions on what was
25 discussed so far, Ms. Sternheim?

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1 MS. STERNHEIM: Does the Court know how many will be
2 in each sitting, or are you just dividing up the 600 by the
3 number of sittings?

4 THE COURT: They've put out a certain number of
5 summonses with --

6 Let me just back up. The need to do it over several
7 days, the need to do it in panels and the limits on the numbers
8 are dramatically affected by Covid, because we have six-foot
9 spacing requirements under the district protocols. They've
10 worked hard to maximize the number of people who can sit in
11 what will be two rooms, two large rooms, with sufficient
12 spacing. All of those rooms require staffing, of course, so I
13 believe that we're talking about 100 people per panel.

14 Let me just get confirmation of that.

15 MS. MAYERS-BEST: My name is Rhonda Mayers-Best. I'm
16 the jury administrator.

17 THE COURT: Just a second, Rhonda. Thank you. I'll
18 let you know if I need you, and I appreciate that.

19 And Rhonda, you can confirm you've summoned
20 anticipating 100 people per panel. Is that correct, Rhonda?

21 MS. MAYERS-BEST: Correct.

22 THE COURT: OK.

23 Ms. Sternheim, we'll have 100 people in the morning
24 each day, 100 people in the afternoon each day, over the course
25 of three days.

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1 MS. MAYERS-BEST: Correct.

2 MS. STERNHEIM: Thank you, Judge.

3 The other questions I can wait until the Court
4 addresses other protocol.

5 THE COURT: OK.

6 And let me just pause.

7 The next thing I wanted to talk to you about goes to
8 the exercise of peremptories and the number of qualified jurors
9 that I will, number of jurors I'll seek to qualify.

10 Once we get a sufficient number of qualified jurors
11 through the practice I've just described, the parties will
12 exercise their peremptories, of course, and what I'd like
13 counsels' input on at this time is a timing question. I've
14 thought a lot about this. I think we've got two potential
15 options as to timing of the exercise of peremptories, depending
16 on how quickly we move through the voir dire process and get a
17 sufficient number of qualified jurors.

18 If we use every day, including the 19th, then I think
19 we only have one option, but if we're done before that, which I
20 think there's a good chance of, then I think we have two
21 options: either November 19 or November 29.

22 So let me just back up.

23 As a preliminary matter, by my count, I need to
24 qualify 40 jurors. Consistent with Rule 24 of the Federal
25 Rules of Criminal Procedure, 12 primary jurors, with respect to

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1 that, the defense gets ten peremptories; the government gets
2 six. As I said, I'll seat six alternates. Under the rule,
3 that's three additional peremptories per side for the
4 alternates. If my math is right, that adds up to 40.

5 To have a cushion heading into peremptory challenges,
6 it's my plan -- again, time dependent -- to try to qualify at
7 least 50 jurors, somewhere in the 50 to 60 range. So then the
8 question is do we have that panel of qualified jurors come back
9 on the 19th and exercise peremptories, or do we have them come
10 back on the 29th?

11 Either way, I anticipate that once we have that panel
12 of qualified jurors come back, I'd ask some very basic
13 preliminary questions -- do any jurors wish to amend answers?
14 Confirm that they've not read or researched about the case,
15 we'd deal with any issues along those lines, and then the
16 parties would exercise the peremptories and all the others
17 would be excused.

18 If we do that on the 19th and finish the process, I'd
19 inform the 18 that they've been selected as jurors, remind them
20 very clearly of all the instructions and restrictions that
21 apply, and direct them to return on the morning of the 29th.

22 On that date, I'd swear them in, give them standard
23 preliminary instructions, and we head to openings, straight
24 into opening statements.

25 Alternatively, if we were to wait for that final

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1 process until the 29th, I'd bring that panel of 50 to 60
2 qualified prospective jurors back. The parties would
3 exercise -- I'd do that initial questioning to ensure no final
4 issues. The parties would exercise their peremptories, and
5 then I would excuse the unused or struck jurors, swear in our
6 18, give the instructions, and we'd get on our way.

7 I will say that I think there are advantages and
8 disadvantages to both. I'll also say that I believe both will
9 be logistically possible, although the 29th is not yet totally
10 certain, because jury selection in other cases will go forward
11 on that day, occupying the larger spaces, and it impacts both
12 available space and staff resources. But I believe we can work
13 out the logistics. But before I finalize either way, I wanted
14 to hear the parties' views.

15 Ms. Pomerantz.

16 MS. POMERANTZ: Thank you, your Honor.

17 The government appreciates the Court's thoughtfulness
18 on this.

19 The government's view would be that November 19 would
20 be strongly preferred to -- and I would note, your Honor, that
21 because there are witnesses traveling out of state, and in
22 light of Covid-related issues, having a firm start date, a date
23 when we know witnesses will start to be put on the stand,
24 that's very helpful for planning purposes.

25 THE COURT: Yes, we will start on the 29th. There is

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1 no doubt about that. I think what we're talking about is a
2 fairly limited process that requires, of course, checking in
3 the individuals. But we'll lose a little bit of time, to be
4 sure.

5 Is that the government's view and the basis for that
6 view?

7 MS. POMERANTZ: Yes. Thank you, your Honor.

8 THE COURT: All right.

9 Ms. Sternheim.

10 MS. STERNHEIM: Thank you, Judge.

11 The defense would request that challenges be exercised
12 on the 29th for the following reason:

13 There is at least a ten-day gap from the last
14 scheduled day of jury selection until the start of the trial on
15 the 29th. Significantly, prospective jurors will be
16 celebrating Thanksgiving, a holiday that most have not
17 celebrated in more than a year. It is likely that the topic of
18 jury service and this case may come up. Views may be espoused,
19 especially if people know that a family member or friend has
20 been summoned to jury service, and it is very unlikely and very
21 uncomfortable for a prospective juror to have to remove
22 themselves from the Thanksgiving table or the venue to avoid
23 being involved in that conversation.

24 I would say that in an abundance of caution, that the
25 better approach would be to do it on the 29th. It will not

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1 take that long. We will be ready to strike, but your Honor
2 will need to get to see whether, in that interval, there has
3 been any impact on the ability of the panel that comes in to
4 serve fairly and impartially.

5 THE COURT: All right.

6 Any final thoughts, Ms. Pomerantz?

7 MS. POMERANTZ: Nothing further from the government.
8 Thank you, your Honor.

9 THE COURT: All right. I will consider it. You've
10 all articulated factors I've considered, and I will see about
11 the logistics issue, and I'll see if those can be worked out so
12 that we have the option for either. And then what I may do is
13 wait and see where we are as we head into the voir dire process
14 before coming to final resolution. But to the extent I decide
15 to do that, I will let you know, and I thank you for your
16 input.

17 OK. I'm now ready to turn to the sealing issue, but
18 let me give both sides an opportunity to raise anything, to ask
19 any other questions about what I've described, or to raise any
20 concerns or points for further consideration.

21 Ms. Pomerantz.

22 MS. POMERANTZ: Thank you, your Honor. Nothing
23 further from the government.

24 THE COURT: Ms. Sternheim.

25 MS. STERNHEIM: Nothing other than some preliminary

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1 questions about which courtroom we will ultimately be using.
2 But I think that getting to the issue of sealing is more
3 important.

4 THE COURT: OK. And I think I can answer the other
5 logistic questions, probably.

6 All right. As I've noted, the defense, without
7 objection from the government, requests that the parties' joint
8 proposed questionnaire and voir dire be sealed.

9 I guess my first question, just for clarification,
10 Ms. Sternheim, is whether that request extends to the Court's
11 draft or what will ultimately be the final blank questionnaire
12 and anticipated voir dire.

13 MS. STERNHEIM: Judge, the answer is yes, and if you'd
14 like me to give my reasons, I'm glad to.

15 THE COURT: Yes. First I wanted to know whether
16 you've consented to that, and I'll hear you. I assume whatever
17 the reasons are it would apply to all. But I do want to hear,
18 and I need to hear very specifically, are you seeking
19 particular redactions, or what is the concern? And to the
20 extent you have any authorities for the proposition that you
21 seal proposed documents like this and the Court's draft in
22 anticipation, I would certainly take that. But it's my
23 understanding, and research indicates, that they are typically
24 docketed. I've certainly always docketed them in the many
25 cases I've tried. But let me hear specifically what the issue

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1 is, Ms. Sternheim.

2 MS. STERNHEIM: OK. The documents, all four of
3 them -- the two questionnaires, the parties' and the Court's,
4 as well as the voir dire questions -- contain references to
5 this case, names of participants. Any person who is summoned
6 for jury service, they likely connect their summons with any
7 press coverage there may be with regards to the questionnaire
8 and the jury voir dire questions and this case.

9 Until the prospective jurors complete their
10 questionnaires, they may read coverage, search the media. They
11 are under no obligation or requirement to refrain from that,
12 and we're concerned that that will further have a diluting
13 effect on our ability to seat a fair and impartial jury. We
14 have no problem whatsoever at the moment the jury is sworn,
15 after peremptories have been exercised, that the Court place on
16 the public record all of those documents. This is a procedure
17 that we think can ensure a fair trial for both parties in light
18 of extraordinary media coverage in this case.

19 THE COURT: I need more specifics. You said
20 references to this case, names of participants. The docket now
21 and going forward, as more filings come in, is going to contain
22 names related to this case, names of participants. All of that
23 information is part of the docket in this case, to be sure.

24 That's No. 1. So No. 1 is I don't see how those
25 factors in the questionnaire are particularly different from

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1 any prejudice analysis from other materials on the docket.

2 And No. 2, I'm still failing to see what the prejudice
3 is. If you have a grade school math test and you get the
4 questions in advance, you surely have some sort of advantage.
5 To the extent we have a juror who has some awareness of the
6 questionnaires because it's reported in the media in some way,
7 they will have to truthfully tell us that in the questionnaire
8 and the voir dire process. We would be able to explore that in
9 any way, and it's just unclear to me what prejudice you're
10 seeing as a result of that.

11 I'll hear you on those two points.

12 MS. STERNHEIM: Your Honor, I think this is an
13 extraordinary case, and there has been no ability for the Court
14 or the government and certainly not the defense to control any
15 of the vast media coverage in this case, which has
16 significantly prejudiced our client.

17 While things are placed on the public record, and
18 rightly so, this is a situation that is somewhat different.
19 Giving jurors the opportunity to view the questionnaire before
20 they come to court to fill it out is like a take-home exam and
21 they can fill out all the answers and do all the research and
22 decide what answers they want to put on those papers.

23 I think that there's an opportunity for people to be
24 motivated to want to sit on this jury for a variety of reasons,
25 some of which I have expressed in other filings that have been

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1 made public. I think in this case the Court has the
2 supervisory power and the discretion to make sure that every
3 protocol is put in place to ensure that a jury is seated that
4 is fair and impartial.

5 Perhaps I've been in too many cases where jurors have
6 said one thing and many things they don't say, and you can ask
7 as many questions as you want, but we have to rely on the
8 candor of individuals who come to serve. I do not think that
9 there is a great hardship or denial of the public's right to
10 know when the Court has just said that the press can be present
11 during the questioning, and that would be the day of the jurors
12 actually being in court. But I think to place the
13 questionnaire and the voir dire questions on the public record
14 and have them reported in the press, a situation that the Court
15 cannot control, will have a very negative effect on both the
16 parties in this case, but most significantly on the party that
17 has been most damaged, that being Ms. Maxwell.

18 THE COURT: OK. Any authorities, any specific
19 authorities, and I mean examples of any other -- there are lots
20 of significant high-profile cases that have occurred in this
21 district and others. Any examples, and I don't presume any
22 judge in such a case could control press coverage. I don't
23 even know what that would look like, but you have to try the
24 case as the law requires in a public trial, and surely there
25 are high-profile cases in this modern era, where you could name

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1 an example in which a judge didn't docket these materials in
2 advance.

3 MS. STERNHEIM: Judge, I would just respond that, yes,
4 there have been high-profile cases, but in federal court, I am
5 not aware of a high-profile case that has alleged minor
6 victims, whose identities are sought to be protected. I think
7 that this is an extraordinary case. It has garnered more media
8 attention than any of the other high-profile cases, and we are
9 urging the Court to exercise its discretion and supervisory
10 power. We will provide to the Court any authority that we have
11 on this topic at the close of business today.

12 THE COURT: We'll see about that.

13 Ms. Pomerantz.

14 MS. POMERANTZ: Thank you, your Honor.

15 In conferring with the defense about the parties'
16 joint proposed questionnaire and voir dire, the defense shared
17 concerns with the government regarding press coverage
18 prejudicing the jury selection process, and so the defense
19 asked the government to file under seal, which the government,
20 as your Honor knows, the government did. Respectfully, the
21 government submits that because this is the defense's request,
22 it is up to the defense to justify the sealing request, and the
23 government defers to the Court's judgment.

24 THE COURT: Do you continue to not oppose, or do you
25 oppose? Obviously, it's their motion, so it's their burden.

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1 I'm asking the government's position.

2 MS. POMERANTZ: Your Honor, we defer to the Court on
3 this.

4 THE COURT: I'll take that as you continue not to
5 oppose. OK, Ms. Pomerantz? That's the last position stated,
6 and you're not changing that view, as I hear you. Correct?

7 MS. POMERANTZ: Correct, your Honor.

8 THE COURT: I am prepared to rule on this.

9 The request to file the joint proposed questionnaire
10 and voir dire under seal as well as the Court's proposed
11 questionnaire, which the government does not oppose, has been
12 requested by letter and now argued here. Several news
13 organizations have opposed the request.

14 I do conclude that the defendant has failed to justify
15 sealing the proposed voir dire and questionnaire. First,
16 there's no privacy interest in a blank questionnaire, like the
17 kind of interest that is articulated in *Lugosch v. Pyramid Co.*
18 *of Onondaga*, 435 F.3d 110 (2d Cir. 2006). The parties' sole
19 rationale for sealing the submission is to at a general level
20 avoid media coverage that may prejudice the jury selection
21 process. The jurors are sworn to give true and complete
22 answers to the questionnaire and voir dire.

23 I will be individually, one-on-one, questioning the
24 jurors, and with the parties present, I feel confident that I
25 can discern any clear dishonesty. This is not just going to be

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1 a summary voir dire; it will be probing.

2 Even if a juror were somehow exposed to a specific
3 media report on the questionnaire, the juror would be sworn to
4 report that exposure. The questionnaire and voir dire are
5 designed to unearth that kind of prior exposure and any
6 resulting potential bias.

7 Nor is it clear what prejudice results from that
8 possibility. As I said, I am not persuaded that in the off
9 chance there's a juror who has the questionnaire or a media
10 reporter has the questionnaire in advance and fails to disclose
11 that, it's somehow prejudiced in their response to a question.
12 If a juror's going to lie and be dishonest, we will smoke that
13 out, and the fact of this questionnaire being publicly docketed
14 is not going to increase or decrease any such likelihood.

15 Moreover, as I said, the proposed exact questionnaires
16 are in my experience regularly docketed, including in
17 comparably high-profile cases. Again, in Judge Donnelly's case
18 just very recently, so similar nature of charges, similar
19 high-publicity media attention, in an age of social media and
20 the like, she docketed the proposed her addressed questionnaire
21 in advance of jury selection, as I understand it. And I'm not
22 aware of counterexamples.

23 Lastly, defense does not articulate any likely
24 prejudice that distinguishes this from the public docketing of
25 other pretrial materials already on the docket or that will be

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1 on the docket as litigation in advance of trial continues.

2 For these reasons, I deny the defendant's request to
3 seal the proposed voir dire and questionnaire. They should be
4 docketed by the end of the week, and my chambers will do the
5 same with my draft as well.

6 All right. With that resolved, I would like to turn
7 to the specifics of my draft and hear, with the background now
8 of how we'll proceed and opportunity to have reviewed those
9 drafts in advance, if there are issues to raise, specific
10 objections to my draft questionnaire and voir dire, which I
11 transmitted to the parties yesterday.

12 Ms. Pomerantz.

13 MS. POMERANTZ: Thank you, your Honor.

14 The government has no objection to the Court's draft
15 questionnaire and voir dire.

16 THE COURT: OK.

17 Ms. Sternheim.

18 MS. STERNHEIM: Yes, Judge.

19 Although we would have preferred a more fulsome
20 questionnaire, containing a larger percentage of the questions
21 that we requested, we do have a few requests that we would ask
22 the Court to consider.

23 THE COURT: OK.

24 MS. STERNHEIM: And if you'd just give me a moment so
25 that I can get that document?

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1 THE COURT: Sure.

2 MS. STERNHEIM: I apologize.

3 Judge, I apologize. There's some ringing in the
4 phone.

5 I just would like, if the Court would permit me -- I'm
6 not able to find the document, but I would ask that
7 Mr. Everdell be able to speak on this issue.

8 THE COURT: OK.

9 MS. STERNHEIM: Very brief.

10 THE COURT: OK.

11 I will ask my deputy if Mr. Everdell can be unmuted,
12 please.

13 MS. STERNHEIM: Judge, I'm prepared to proceed. I've
14 found the document.

15 THE COURT: Thanks.

16 MS. STERNHEIM: OK?

17 THE COURT: I think whatever you're doing when you
18 turn away from the phone, Ms. Sternheim, may create that
19 feedback.

20 MS. STERNHEIM: I apologize. I apologize.

21 THE COURT: All right.

22 MS. STERNHEIM: Very briefly, we would ask for the
23 following inclusions in the Court's questionnaire. With regard
24 to No. 24(b), we would ask that the Court include, and please
25 include, the crimes that were involved.

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1 THE COURT: OK. That is a follow-up in the voir dire,
2 I believe. Let me double-check.

3 MS. STERNHEIM: It is, Judge, but we thought that the
4 questionnaire might be a place where the juror would be more
5 open and comfortable.

6 THE COURT: I will consider that and let you know.

7 MS. STERNHEIM: With regard to 31 and 32(c), we would
8 ask for the inclusion "or the former acting U.S. Attorney for
9 the Southern District of New York, Audrey Strauss."

10 THE COURT: All right.

11 Ms. Pomerantz, any objection?

12 MS. POMERANTZ: Your Honor, the government isn't --
13 (Persistent feedback)

14 THE COURT: I'm not sure if it's you, and I apologize
15 if it's not, but please, to the extent that you're muting your
16 line or moving it in some way that's creating that feedback --
17 I'm not sure, again, if it's you, but that seemed to be the
18 pattern. Let's see if we can hold still.

19 Ms. Pomerantz, let's try again.

20 MS. POMERANTZ: Thank you, your Honor.

21 The government --

22 (Persistent feedback)

23 THE COURT: It's not working. I'm hoping that the
24 tech folks working with Ms. Williams can help us correct this.

25 Everybody mute for a moment. Everybody mute their

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1 lines.

2 (Persistent feedback)

3 THE COURT: I think we've muted everyone.

4 Ms. Williams, can you indicate by text whether you can
5 hear me.

6 OK. And now I'll ask, Ms. Pomerantz, are you able to
7 speak now?

8 MS. POMERANTZ: Yes, your Honor.

9 THE COURT: All right. I think we've done that so I'm
10 going to have Ms. Williams please keep everyone muted until I
11 call on them. That seems, hopefully, to be able to resolve the
12 issue.

13 Go ahead, Ms. Pomerantz.

14 MS. POMERANTZ: Thank you, your Honor.

15 The government is not aware of any reason why Audrey
16 Strauss's name would come up at trial, so the government
17 doesn't understand the basis for the inclusion.

18 THE COURT: All right.

19 I'll ask for Ms. Sternheim to be unmuted, please, and
20 then mute Ms. Pomerantz while --

21 Go ahead, Ms. Sternheim.

22 MS. STERNHEIM: I am unmuted. And Judge, I just want
23 you to know I have not moved my phone, so I do not think that I
24 contributed to the problem before.

25 THE COURT: OK.

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1 MS. STERNHEIM: But I'm glad it's cleared up.

2 THE COURT: I apologize for my own efforts at
3 technological problem solving.

4 MS. STERNHEIM: I appreciate that, Judge.

5 Previously, with regard to the document, the Court
6 referenced the fact that there have been many documents filed
7 on the record that the public may have seen, and up until last
8 week, every single document filed by the government bore the
9 name of acting U.S. Attorney for the Southern District of New
10 York, Audrey Strauss. So to the extent that people have read
11 those documents or seen the press conference, I think it is
12 relevant and in no way prejudices the jury at all. In fact, it
13 provides for the smoking out of any jurors who may know
14 Ms. Strauss or have negative feelings toward her, which would
15 be impugned to the government.

16 THE COURT: Thank you.

17 Ms. Pomerantz.

18 MS. POMERANTZ: Thank you, your Honor.

19 That explanation was helpful for us to understand. We
20 don't object, your Honor.

21 THE COURT: All right. We will add a line that says
22 something like "or the former acting U.S. Attorney for the
23 Southern District of New York, Audrey Strauss."

24 What else, Ms. Sternheim?

25 MS. STERNHEIM: 32(d), we would ask that Alexander

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1 Rossmiller be included. We believe his name will come up
2 during the course of the trial, and he is a member of the U.S.
3 Attorney's Office.

4 THE COURT: Ms. Pomerantz.

5 MS. POMERANTZ: The government, again, isn't aware of
6 any reason why his name would come up at trial, and so the
7 government submits that it's not necessary to include him in
8 the questionnaire.

9 THE COURT: All right. Well, I'm not going to resolve
10 that now. Since his name may come up, to be decided shortly, I
11 don't see any prejudice, so I will allow it. We will add
12 Alexander Rossmiller to the list of past -- or with any of the
13 assistant United States attorneys, we could say "who have been
14 involved with prosecuting this case."

15 OK, Ms. Sternheim?

16 MS. STERNHEIM: And the last, your Honor, has to do
17 with No. 44.

18 THE COURT: OK.

19 MS. STERNHEIM: We would ask that you include the word
20 "protested." I can read it fully if that's more helpful.

21 THE COURT: Go ahead.

22 MS. STERNHEIM: Would that help?

23 THE COURT: Yes, please.

24 MS. STERNHEIM: OK. "Have you or a family member ever
25 lobbied, petitioned, protested, or worked in any other manner

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1 for or against any laws or regulations relating to sex
2 trafficking, sex crimes against minors, sex abuse, or sexual
3 harassment generally, or supported organizations that seek to
4 address sex abuse or sexual harassment generally?"

5 THE COURT: So you've changed the question beyond
6 inserting "protested."

7 MS. STERNHEIM: That's correct.

8 THE COURT: Let me ask you to give that to me again.

9 MS. STERNHEIM: Of course.

10 "Have you or any family member ever lobbied,
11 petitioned, protested, or worked in any other manner for or
12 against any laws or regulations relating to sex trafficking,
13 sex crimes against minors, sex abuse, or sexual harassment
14 generally, or supported organizations that seek to address sex
15 abuse or sexual harassment generally?"

16 THE COURT: Just a moment.

17 Ms. Pomerantz.

18 MS. POMERANTZ: Thank you, your Honor.

19 The government doesn't have an issue with adding the
20 word "protested," but I would submit that the additional
21 language proposed by the defense makes the question a bit
22 vague, and I think the Court's question, as framed, captures
23 sufficient information and should get, I think, several
24 responses from prospective jurors.

25 THE COURT: Ms. Sternheim, I will accept "protested";

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1 I think that's a helpful addition. I'm not sure what is
2 gained, other than some potential confusion, out of the
3 additional language you're suggesting.

4 MS. STERNHEIM: Well, one word that is lacking in that
5 first part is "support," and we believe it's important to
6 identify individuals who have been supporters or involved in
7 the Me Too or Times Up movements. I don't think the question
8 as originally stated is broad enough to do that.

9 THE COURT: Just a moment.

10 How about "Have you or a family member ever supported,
11 petitioned, protested, or worked in any other manner for or
12 against any laws or regulations or organizations relating to
13 sex trafficking, sex crimes against minors, sex abuse, or
14 sexual harassment?"

15 Ms. Sternheim.

16 MS. STERNHEIM: Thank you, Judge. That would suffice.

17 THE COURT: Ms. Pomerantz.

18 MS. POMERANTZ: That's fine with the government.

19 Thank you, your Honor.

20 THE COURT: All right. We'll make that change.

21 Anything else, Ms. Sternheim?

22 MS. STERNHEIM: No. Thank you.

23 MS. POMERANTZ: Your Honor, if I may, in light of the
24 issue raised by the defense on 32(d), the government would
25 request that as to 32(e) additional names of defense attorneys

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1 who are representing or have represented the defendant be
2 included.

3 THE COURT: OK.

4 Ms. Sternheim.

5 MS. STERNHEIM: I'm not sure who the government is
6 referring to. The counsel of record are appearing at this
7 conference. No one else has been a member of the defense team.

8 MS. POMERANTZ: Your Honor, I'm happy to respond to
9 that.

10 Mark Cohen is on the docket in this case, and David
11 Marcus has also represented the defendant in connection with
12 her various appeals.

13 THE COURT: Right. And I've written about the extent
14 to which Mr. Marcus is obligated to follow the relevant rules
15 that apply to the defense in this case. I'm inclined,
16 Ms. Sternheim, to agree for similar reasons to the inclusion of
17 Mr. Rossmiller and include Mr. Cohen and Mr. Marcus.

18 MS. STERNHEIM: Judge, I don't mean to draw the
19 distinction that it is correct that at some point Mark Cohen
20 was counsel who put in a notice of appearance. Mr. Marcus has
21 not put in a notice of appearance. He was only coupled in when
22 the government took issue with something that he had written
23 that we had not endorsed.

24 THE COURT: OK. I'm going to include the names.

25 With respect to these three names -- the two for the

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1 defense and the one for the government -- where they have
2 people not part of the defense team, if you prefer to have
3 those included in the list of names that we'll deal with after
4 voir dire instead of indicated as current members of the
5 defense or prosecution teams, I'm fine with that.

6 Ms. Sternheim, do you prefer that?

7 MS. STERNHEIM: I think we would.

8 THE COURT: Ms. Pomerantz.

9 MS. POMERANTZ: That's fine, your Honor.

10 THE COURT: All right. We'll do that so there's
11 clarity. What we're asking in the questionnaire are the
12 current members of the prosecution and defense teams, and to
13 the extent we have to draw a list, broadly anyway, of any names
14 of people who may be mentioned at trial and to the extent there
15 are former counsel who are not participating immediately in the
16 case or who are participating but haven't filed a notice of
17 appearance, it's appropriate to include their names in the list
18 to be sure that no one has any personal knowledge.

19 We will do that.

20 Anything else?

21 Ms. Sternheim.

22 MS. STERNHEIM: No. Thank you.

23 THE COURT: Ms. Pomerantz.

24 MS. POMERANTZ: No. Thank you, your Honor.

25 THE COURT: OK. I am going to make the changes that I

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1 suggested before docketing this. The only one left open was
2 24(b). Let me just take a quick look.

3 I'm going to leave that as it is, because we'll do
4 that as a follow-up in the voir dire. I should say all of
5 this, a lot of work went into balancing the questions that are
6 included in the questionnaire and the questions that are
7 included in the voir dire because there are timing constraints
8 on both, and so partly, I'm seeking to achieve a balance, and
9 we need the questionnaire to be completable in time for the
10 afternoon panel, as an example, and I think this is an
11 appropriate question in any event for follow-up as I anticipate
12 in the voir dire.

13 That resolves the open questions. I'll make the
14 changes. My draft will be docketed by the end of the week and
15 the parties' joint proposed will be docketed by the end of the
16 week as well in light of my prior ruling.

17 Let me just get to one, I think, additional issue that
18 I have.

19 This is a logistical question that goes to my
20 providing some oral preliminary instructions to the panel
21 before they fill out the questionnaire.

22 Typically, many judges would make, do make, a brief
23 appearance in the jury assembly room where questionnaires are
24 being filled out before the jurors fill out the questionnaire
25 in order to emphasize the basic instructions and to see the

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1 judge there in person. I can do that, but there are space
2 limitations to get enough potential jurors in the room to take
3 these that we wouldn't be able to fit counsel table and the
4 parties in the room. I would also have to repeat it six times,
5 since we have two panels a day over three days.

6 Another option that occurs to me is to record a short
7 video, which the jury department would simply play in advance
8 of each panel filling out the questionnaire. Either way, I
9 would distribute the script of what I would say before I record
10 it to counsel so that you can weigh in or object or make any
11 changes.

12 Let me hear your views as to that question regarding
13 the logistics of some preliminary instructions from me.

14 Ms. Pomerantz.

15 MS. POMERANTZ: Thank you, your Honor.

16 The government has no preference and defers to what
17 the Court prefers.

18 THE COURT: OK.

19 Ms. Sternheim.

20 MS. STERNHEIM: I think that's a fine idea, Judge, so
21 you don't have to repeat it six times. But I do have a
22 question, since you just mentioned counsel table. Is there an
23 expectation that counsel be present on the days that the
24 questionnaires are completed?

25 THE COURT: No. I think the only reason we would even

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1 need to think about that is when judges do go give those
2 preliminary instructions, as best I can tell, sometimes counsel
3 are present, sometimes they're not. We wouldn't be able to
4 accommodate in-person presence for that purpose. I don't think
5 it would be necessary, so my suggestion is not to have the
6 parties present for the filling out of the questionnaire.

7 Do you disagree with that in any way, Ms. Sternheim?

8 MS. STERNHEIM: No, Judge. I just wanted a
9 clarification, because I have attended when judges have given
10 those preliminary instructions. But we have no objection to
11 the Court doing it in a recorded method.

12 THE COURT: OK.

13 Ms. Pomerantz, do you continue to be comfortable with
14 that?

15 MS. POMERANTZ: Yes. Thank you, your Honor.

16 THE COURT: All right. I will docket an anticipated
17 script soon to get your input in a letter with any requests for
18 changes, and then I will get that recorded and work with the
19 tech folks in the D.E.'S Office and the jury department to be
20 able to have that played before the questionnaire is filled
21 out.

22 That's what I have, counsel. Are there other matters
23 to raise related to jury selection or otherwise at this time?

24 Ms. Pomerantz.

25 MS. POMERANTZ: Not from the government. Thank you,

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1 your Honor.

2 THE COURT: Ms. Sternheim.

3 MS. STERNHEIM: Briefly, Judge.

4 What courtroom will the jury be selected, and where
5 will the trial be held?

6 THE COURT: OK. Questionnaires will be filled out in
7 the jury assembly room and in a ninth floor courtroom, as the
8 district has been doing jury selection throughout Covid. So
9 there would typically -- to the extent it happens in those
10 rooms, typically there's a live feed between the jury assembly
11 room and the ninth floor courtroom that will be able to hold,
12 and I think we might even have an additional room to get up to
13 the 100 people per panel. That's 500 Pearl, those spaces for
14 the filling out of the questionnaire.

15 I believe what we will do for the voir dire practice I
16 described, it will take place on the fifth floor of the
17 Thurgood Marshall Courthouse in courtroom --

18 My deputy asked me to pause and confirm.

19 Ms. Maxwell, are you still on the line?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: OK. Great.

22 Ms. Pomerantz.

23 MS. POMERANTZ: Yes, your Honor.

24 THE COURT: Ms. Sternheim, you're still on.

25 MS. STERNHEIM: Yes, your Honor.

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1 THE COURT: OK. We have everyone we need.

2 The courtrooms on the fifth floor where jury selection
3 will take place are, and my clerk's just going to make sure I
4 get this right via text, 506 and 518, I believe.

5 I'm waiting for the text.

6 That's correct. 506 and 518.

7 We have walked through the logistics of that so that
8 we're able to walk the next juror -- No. 1, the jurors will be
9 able to report to those rooms using nonpublic elevators and
10 hallway, and the like, and we'll be able to move the juror from
11 one room to the next via nonpublic space, so that should aid
12 the process throughout.

13 Trial, we believe, will be in 318. And I'm going to
14 get confirmation of that.

15 318 in the Thurgood Marshall Courthouse.

16 Ms. Sternheim.

17 MS. STERNHEIM: Thank you, Judge.

18 THE COURT: OK. And I will say we will, there will be
19 an opportunity through the D.E.'S Office, and my chambers will
20 reach out to counsel on both sides, an opportunity for
21 walk-throughs of the spaces in advance of trial.

22 And I think that's it.

23 Ms. Sternheim, any other questions?

24 MS. STERNHEIM: No, Judge, but I do recall, having
25 tried a case before your Honor in 318, that there are

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1 acoustical issues that I would hope might be addressed by the
2 tech department.

3 THE COURT: We've spent a fair amount of time talking
4 about that, and the acoustics won't be as good as they would be
5 in 500 Pearl, but there are other very good reasons to be where
6 we'll be. I can assure you that the D.E.'S Office and my
7 chambers will continue to work to make it as good as it can
8 possibly be in an old courtroom. But I feel confident, based
9 on what we've done so far and what I hope will continue to be
10 the case, that it's going to work well.

11 MS. STERNHEIM: Thank you.

12 MS. POMERANTZ: Your Honor, I wanted to just raise one
13 issue, which is that the government is aware of certain
14 courtroom sketches of Jeffrey Epstein at, I believe, 500 Pearl,
15 and so just wanted to raise that for the Court and
16 understanding that such sketches would be removed before the
17 selection process.

18 THE COURT: OK. I think that's a good suggestion, and
19 I will talk to the D.E.'S Office.

20 MS. POMERANTZ: Thank you very much, your Honor.

21 THE COURT: Anything else?

22 Ms. Pomerantz.

23 MS. POMERANTZ: Nothing further. Thank you.

24 THE COURT: Ms. Sternheim.

25 MS. STERNHEIM: Nothing further. I do thank the

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1 government for raising that. It was something we were going to
2 raise. The pictures, at least the last time I saw, were in the
3 corridor right by the elevator.

4 THE COURT: Yes. We'll get that down for sure.

5 Our next conference is November 1, and I think that's
6 all I have for now.

7 Thank you, everyone.

8 We're adjourned.

9 (Adjourned)

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